

**United States**  
**Department of the Interior**  
**Bureau of Land Management**

*Miles City Field Office*

**Garfield County Snow Ck  
Rd Borrow ROW**

Categorical Exclusion (CX)  
DOI-BLM-MT-C020-2013-0196-CX

*For Further Information Please Contact:*

Bureau of Land Management  
Miles City Field Office  
111 Garryowen Road  
Miles City, Montana 59301  
406-233-2800

BLM



UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF LAND MANAGEMENT  
*Miles City Field Office*  
*111 Garryowen Road*  
*Miles City, Montana 59301*

**CATEGORICAL EXCLUSION REVIEW AND APPROVAL**

**A. Background**

BLM Office: Miles City Field Office      Lease/Serial/Case File No.: MTM-106638

NEPA Number (if applicable): DOI-BLM-MT-C020-2013-0196-CX

Proposed Action Title/Type: Garfield County Short Term ROW MTM-106638 for a Borrow Site for Repair of the Hubbard Road on the Snow Creek Crossing

Location of Proposed Action (include county): Garfield County – T21N, R35E, Section 15, NW $\frac{1}{4}$ NE $\frac{1}{4}$ , P.M.M.

Description of Proposed Action:

The proposed action is to issue Garfield County a short term Title V FLPMA ROW Grant MTM-106638 for a borrow area on federal BLM administered land in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 15, T21N, R35E, P.M.M., for a FEMA funded repair project on the Hubbard Road. Short term ROW MTM-106638 would be issued to Garfield County for borrow for the repair of a washed out pipe in Snow Creek on the Hubbard Road, located on private land in the N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 15, T21N, R35E., P.M.M. The repair work has been approved by FEMA. The ROW would be issued for a term of approximately one and one-half years. Approximately 1,500-2,000 cubic yards of borrow material would be required for fill. The borrow area is shown on the attached map and photo and would be approximately 50 feet wide and 150 feet long along the west side of the road, consisting of .17 acre, more or less. A blade, dozer, and scraper, would be used to repair the washed out portion of the road. A scraper would be used to move the borrow material from the borrow area to the repair site. After the borrow material is removed the site will be reclaimed (i.e., sloped, drainage control, seeding disturbed areas where possible with weed free native seed) in accordance with the "Gold Book. Garfield County plans to repair the Snow Creek crossing as soon as they can obtain authorization. This road is used by local residents and the general public for hunting and fishing access. The FEMA funded project is estimated to cost \$60,000-\$65,000. Construction work must be completed as soon as possible because the washed out pipe on the road is a safety hazard. No hazardous material would be used, produced, or stored in connection with the proposed ROW. The repair work would be completed on adjoining private land. The short term ROW would be issued for approximately one and one-half years, expiring on December 31, 2015.

The standard stipulations for cultural and/or paleontological resource protection and hazardous materials stipulation would be made a part of the ROW grant, as would the standard Civil Rights stipulation and standard stipulation that all activities associated with the ROW would be conducted within the authorized limits of the grant. The applicant would be responsible for weed control on disturbed areas within the limits of the ROW and for coordinating with parties holding authorized rights on the adjacent and affected lands [such as the grazing permittee/lessee and buried telephone cable ROW MTM-71919 and MTM-94061 holder Mid Rivers Telephone Coop., Inc. buried copper and fiber optic cable in the ditch on the East side of the road]. There would be no construction when the soils are too wet. The appropriate seed mix would be used for reclamation. The project would be completed in compliance with the applicant's application/plan of development and guidelines for Roads in the "Gold Book" found at [http://www.blm.gov/wo/st/en/prog/energy/oil\\_and\\_gas/best\\_management\\_practices/gold\\_book.html](http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/best_management_practices/gold_book.html). The ROW would be granted pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90Stat. 2776; 43 U.S.C. 1761) and be subject to the terms and conditions in 43 CFR 2800 and to the attached stipulations. Garfield County is exempt from paying processing and monitoring fees, and rental as provided for by regulations found at 43 CFR 2804.16 and 2806.14, respectively. The ROW would be monitored for use and reclamation before closure.

#### **B. Land Use Plan Conformance**

Land Use Plan Name: Big Dry R. A. RMP/EIS ROD

Date Approved/Amended: Approved in April of 1996

The proposed action is in conformance with the applicable LUP because it is specifically provided for in the following LUP decision(s): This proposed action is in conformance with the Big Dry Resource Area RMP/EIS ROD which was approved in April of 1996. On page 10 of the Record of Decision, it states that "In areas where rights-of-way are allowed, stipulations from the BLM Manual 2800 will be used to protect resource values." The proposed action has been reviewed for conformance with this plan and its terms and conditions as required by 43 CFR 1610.5

#### **C: Compliance with NEPA:**

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9E (19) for short term rights-of-way for construction purposes where the proposal includes rehabilitation.

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and, as documented below, none of the extraordinary circumstances described in 516 DM2 apply.

Extraordinary Circumstances		
The project would:		
1. Have significant impacts on public health or safety.		
Yes	No  <b>X</b>	<b>Rationale:</b> <i>The project would not have significant impacts on public health and safety, but it would improve public safety, as the road is being repaired to prevent a safety hazard and after it is repaired travelers would be able to use the road again and it would be a shorter route for some. pw 08/02/13</i>
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.		
Yes	No  <b>X</b>	<b>Rationale:</b> <i>Impacts would not be significant as the proposed action is to provide borrow for fill to repair the existing Hubbard Road where it was washed out where it crosses Snow Creek. Approximately .17 of an acre of surface would be disturbed and the site would be reclaimed. pw 08/02/13</i>
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102 (2) (E)].		
Yes	No  <b>X</b>	<b>Rationale:</b> <i>No controversial environmental effects or unresolved conflicts. pw 08/02/13</i>
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		
Yes	No  <b>X</b>	<b>Rationale:</b> <i>No highly uncertain and potentially significant environmental effects or unique or unknown environmental risks. pw 08/02/13</i>
5. Establish a precedent for future action or represent a decision in principal about future actions with potentially significant environmental effects.		
Yes	No  <b>X</b>	<b>Rationale:</b> <i>This action is not connected to another action that would require further environmental analysis nor will it set a precedent for future actions that would normally require environmental analysis. pw 08/02/13</i>
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		
Yes	No  <b>X</b>	<b>Rationale:</b> <i>This action does not have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects. See CFR 1508.7. pw 08/02/13</i>

7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.		
Yes	No  XX  CJ 08/13/2013	<p><b>Rationale:</b> <i>Confirm that cultural surveys have been completed; the appropriate data bases have been reviewed; and appropriate concurrence from SHPO and tribes have been received indicating that significant impacts are not expected.</i></p> <p><i>The Class III Cultural/Paleontological survey of 12.29 Block and 0 linear acres along the proposed Snow Creek Borrow Area yielded in no new cultural or paleontological sites being located/recorded.</i></p> <p><i>There were two isolates recorded during the survey of the Snow Creek Borrow Area. IF-1 is a grey porcelainite reworked side notch projectile point. The point is generally characteristic of besant morphology age ranging from 1900-1500BP (Taylor 2006).</i></p> <p><i>IF-2 is a Size 1 Grey Porcelainite piece of flake shatter.</i></p> <p><i>Paleo: Paleo: RMP 1722 Clam Bake Locality: Micro site with clams, fish amphibians. West of Road in NWNE. St. Louis Science Center (Permit #:MTM103655) PI: Carl Campbell a qualified and permitted paleontologist examined the known recorded locality and found the locality not significant and that the proposed action would not affect a significant paleontological locality. The reporting for the locality is in the St. Louis Science Center's 2013 annual report to the BLM.</i></p> <p><i>Thus, no further work is necessary. It is recommended that all work cease immediately if any additional cultural or paleontological resources are unearthed/discovered during the construction of the proposed Snow Creek Borrow Area ( Stipulation A).</i></p> <p><i>Cultural Report Number: MT-020-13-220,</i></p>
8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.		
Yes	No  X	<p><b>Rationale:</b> <i>No Threatened or Endangered Species or habitat for such exists within or adjacent to the proposed action site. BJB 8/14/13</i></p>
9. Violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment.		
Yes	No X	<p><b>Rationale:</b> <i>No laws are being violated by this action. pw 08/02/13</i></p>

10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).		
Yes	No <b>X</b>	<b>Rationale:</b> <i>The proposed action would not have a disproportionately high and adverse effect on low income or minority populations.</i> <b>pw 08/02/13</b>
11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).		
Yes	No <b>X</b>	<b>Rationale:</b> <i>Consultation with tribes regarding Indian sacred sites must take place</i> The proposed action would not limit access or use of public lands in Garfield County. No sites were located during the inventory of the proposed borrow area. The Ethnographic Overview of Southeast Montana does not identify this location as an area of concern to Native Americans. DM 08/15/13
12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).		
Yes	No <b>X</b>	<b>Rationale:</b> <i>The proposed action will not contribute to the introduction or spread of noxious weeds as an existing road is being repaired where it has washed out, the borrow area will be next to the road and under the authorization the applicant is responsible for weed control within the authorized area and weed free seed is required for reclamation.</i> <b>08/02/13 pw</b>

Shane Findlay  
Supervisory Land Use Specialist  
Division of Non-Renewable Resources

8/12/13  
Date

/s/Kathy Bockness  
Environmental Coordinator

8/15/13  
Date

Decision Record for Categorical Exclusion  
Garfield County Short Term ROW MTM-106638  
for a Borrow Site for Repair of the Snow Creek crossing on the Hubbard Road  
DOI-BLM-MT-C020-2013-0196-CX

Decision: I have made the decision to issue Garfield County a short term Title V FLPMA ROW Grant MTM-106638 for a borrow area on federal BLM administered land in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 15, T21N, R35E, P.M.M., for a FEMA funded repair project on the Hubbard Road at the Snow Creek crossing. Short term ROW MTM-106638 will be issued to Garfield County for borrow for the repair of a washed out pipe in Snow Creek on the Hubbard Road, located on private land in the N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 15, T21N, R35E., P.M.M. The repair work has been approved by FEMA. The ROW will be issued for a term of approximately one and one-half years. Approximately 1,500-2,000 cubic yards of borrow material will be required for fill. The borrow area is shown on the attached map and will be approximately 50 feet wide and 150 feet long along the west side of the road, consisting of .17 acre, more or less.

The standard stipulations for cultural and/or paleontological resource protection and hazardous materials stipulation will be made a part of the ROW grant, as will the standard Civil Rights stipulation and standard stipulation that all activities associated with the ROW will be conducted within the authorized limits of the grant. The applicant will be responsible for weed control on disturbed areas within the limits of the ROW and for coordinating with parties holding authorized rights on the adjacent and affected lands [such as the grazing permittee/lessee and buried telephone cable ROW MTM-71919 and MTM-94061 holder Mid Rivers Telephone Coop., Inc. buried fiber optic cable in the ditch on the East side of the road]. There will be no construction when the soils are too wet. The appropriate seed mix will be used for reclamation. The project will be completed in compliance with the applicant's application/plan of development and guidelines for Roads in the "Gold Book" found at [http://www.blm.gov/wo/st/en/prog/energy/oil\\_and\\_gas/best\\_management\\_practices/gold\\_book.html](http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/best_management_practices/gold_book.html). The ROW will be granted pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90Stat. 2776; 43 U.S.C. 1761) and be subject to the terms and conditions in 43 CFR 2800 and to the attached stipulations. Garfield County is exempt from paying processing and monitoring fees, and rental as provided for by regulations found at 43 CFR 2804.16 and 2806.14, respectively. The ROW will be monitored for use and reclamation before closure.

Rational for Decision: The proposed action meets the criteria for a categorical exclusion under 516 DM 11.9E (19), and none of the exceptions in 516 DM 2 apply. Further the action is in conformance with the Big Dry RMP/EIS, which was approved in April of 1996.

I considered the proposed action and associated stipulations which will be included in the right-of-way and which are attached below. There is no potential for significant impacts. Use of this CX is appropriate and I have decided to implement this action.

**D: Signature**

Authorizing Official: /s/Todd D. Yeager  
(Signature)

Date: 8/16/2013

Name: Todd D. Yeager

Title: Field Manager

**Administrative Review or Appeal Opportunities**

A BLM decision to issue a ROW may be appealed under regulations in 43CFR 2801.10, in accordance with part 4 of 43 CFR. A BLM decision affecting a ROW application carries the “full force and effect” of the decision. Under full force and effect the decision can be implemented immediately even if the decision is appealed to the IBLA. An affected party has the opportunity to file a petition for a stay with an appeal to the IBLA. The decision to issue a ROW in full force and effect requires information on petitions for stay to be included with the decision notification. The decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and information on BLM Form 1842-1. If an appeal is taken, the notice of appeal must be filed in the Miles City Field Office at 111 Garryowen Road, Miles City, Montana 59301 within 30 days from receipt of the decision issuing the decision with a copy of the notice of appeal sent to the Office of the Field Solicitor, U.S. Department of Interior, P. O. Box 31394, Billings, Montana 59107-1394. The appellant has the burden of showing that the decision appealed from is in error.

If a petition (request) is filed pursuant to regulation 43 CFR 2801.10 for a stay (suspension) of the effectiveness of the decision during the time that the appeal is being reviewed by the Board, the petition for a stay must accompany the notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with the Miles City Field Office. If a stay is requested, the requester has the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,



- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

**Contact Person**

For additional information concerning this CX review and decision, contact:

Pam Wall, Realty Specialist  
BLM – Miles City Field Office  
111 Garryowen Road  
Miles City, Montana 59301  
406-233-2846

## STIPULATIONS:

- a. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.
- b. The holder shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et seq.) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.
- c. The holder shall conduct all activities associated with the construction, operation, and termination of the right-of-way within the authorized limits of the right-of-way.
- d. The holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods (within the limits imposed in the grant stipulations).
- e. The holder of this right-of-way grant or the holder's successor in interest shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the regulations of the Secretary of the Interior issued pursuant thereto.
- f. No construction or routine maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of 3-4 inches deep, the soil shall be deemed too wet to adequately support them.
- g. The holder shall seed disturbed areas, where possible, using a method suitable for the location. [Reclamation of the area, (i.e., sloping, erosion control, seeding w/weed free native seed as listed below) shall be in accordance with the "Gold Book" requirements for roads found at [http://www.blm.gov/wo/st/en/prog/energy/oil\\_and\\_gas/best\\_management\\_practices/gold\\_book.html](http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/best_management_practices/gold_book.html). The County will be responsible for all applicable construction permitting (COE 404, SWPPP, etc. if applicable)].

Seed Mixture (Silty, Clayey or Silt Clay Loams)

The combination must include at least four of the following species. Thickspike wheatgrass may be substituted for wheatgrass only when western wheatgrass is unavailable.

<u>Species of Seed</u>	<u>(Variety)</u>	<u>Common Name</u>	<u>Pounds/acre *(PLS)</u>
Pascopyrum smithii	(Rosanna)	Western wheatgrass	3.00
Stipa viridula	(Lodom)	Green needlegrass	2.00

Elymus trachycaulus	(Pryor)	Slender wheatgrass	2.00
Stipa comata		Needleandthread	1.00
Pseudoroegneria spicata	(Goldar)	Bluebunch wheatgrass	2.00
Bouteloua curtipendula		Sideoats Grama	2.00
Schizachyrium scoparium		Little bluestem	2.00

\*Pure Live Seed (PLS) formula: % of purity of seed mixture times %  
germination of seed mixture = portion of seed mixture that is PLS

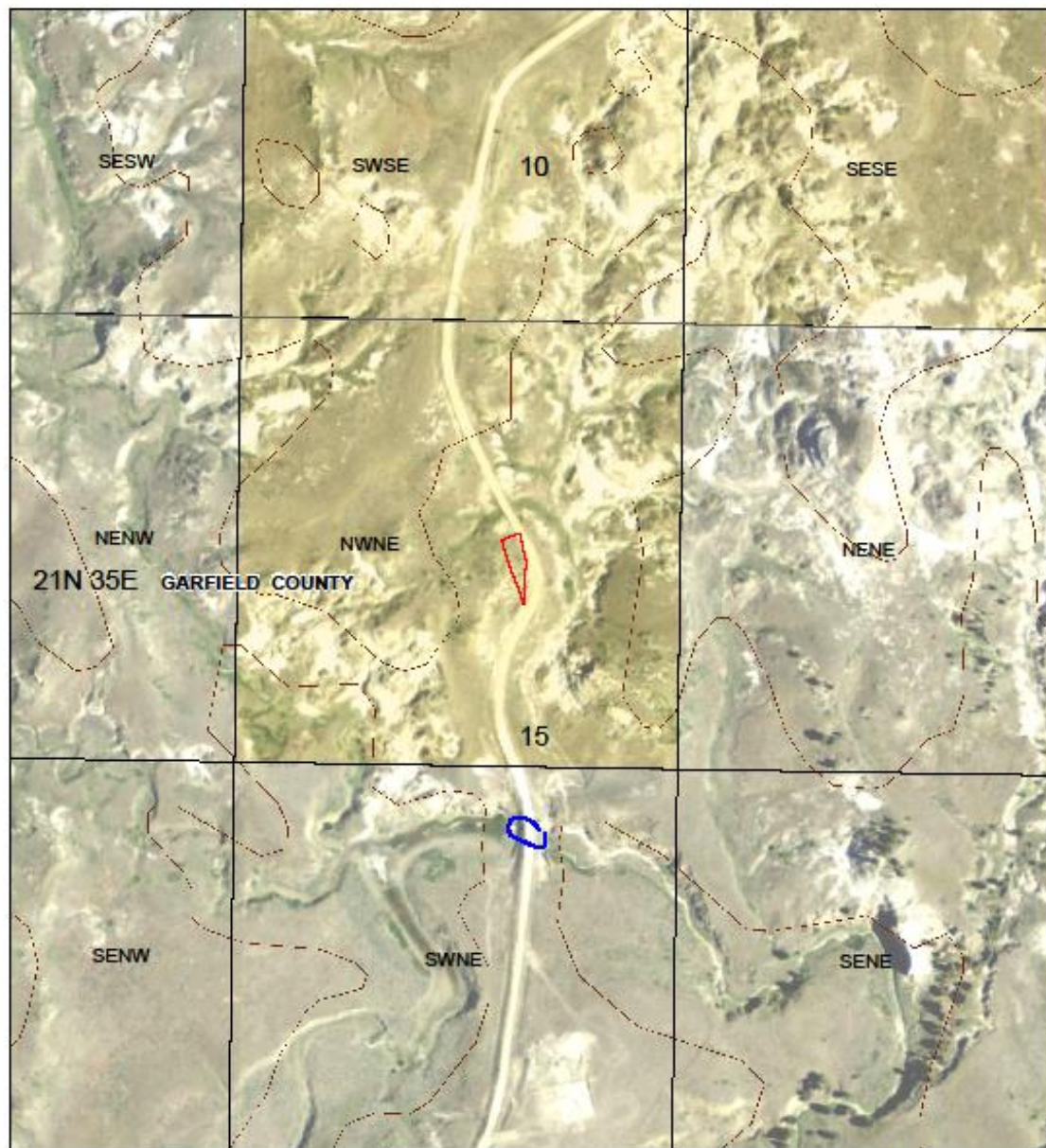
- h. In the event that the public land underlying the right-of-way (ROW) encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any right it has to administer the right-of-way, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part 2800, including any rights to have the holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the right-of-way, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW Holder.
- i. This grant is issued subject to the holder's compliance with the mitigations set forth in the application/plan of development and MT DEQ's reclamation guidelines.
- j. \*The holder shall coordinate with the parties holding authorized rights on the adjacent and affected lands [such as the grazing permittee/lessee and buried telephone cable ROW MTM-71919 and MTM-94016 holder Mid River Telephone Coop. (buried lines in the ditch on the East side of the road)].

\* This non-standard stipulation was approved by the District Manager, which is the next higher level of Bureau line management, for right-of-way MTM-83461, on September 28, 1994



# Garfield County Hubbard Road Borrow Area for Snow Creek Crossing

MTM-106638  
Exhibit B  
07/30/2013



- |  |          |  |                |
|--|----------|--|----------------|
|  | BLM      |  | Borrow Area    |
|  | BLM - LU |  | Co Road Repair |
|  | State    |  |                |
|  | Private  |  |                |

Projected Coordinate System: NAD 1983 Albers  
Graphic Coordinate System: GCS North American 1983  
Datum: D North American 1983

1:5,000

000056.08.049.06

Miles



UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
MILLS CITY FIELD OFFICE

BLM does not warrant the accuracy of the data shown on this map. The user of this map is responsible for obtaining the data and for its use. The user of this map is responsible for obtaining the data and for its use.

This document is made by the Bureau of Land Management for the use of the data for purposes not intended by the BLM.



**BORROW AREA FOR HUBBARD ROAD REPAIR AT SNOW CREEK CROSSING  
MTM-106638  
T21N, R35E, SECTION 15, NW¼NE ¼, GARFIELD COUNTY, MONTANA**



**SNOW CREEK CROSSING ON HUBBARD ROAD  
T21N, R35E, SECTION 15, N½SW¼NE ¼, GARFIELD COUNTY, MONTANA**

